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09/771,135	01/27/2001	Stephen D. Messer	056257-5002	6726
9629 7590 02/19/2010 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004				
EXAMINER				
LE, KHANH H				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/771,135

Applicant(s)

MESSER ET AL.

Examiner

KHANH H. LE

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-55, 57-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 51-55 and 57-66 is/are rejected.
- 7) ☒ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, Applicant's submission filed on 04 February 2010 has been entered. Claims 51-66 were pending. Claim 56 is cancelled. Thus claims 51-55, 57-66 are pending. Claim 51 are amended. Claim 51, 61, 64 are independent.

Claims objections

2. to Claims 51-55, 57-60: are withdrawn. Appropriate correction has been made.

Claim Rejections - 35 USC § 112 (first paragraph)

3. **Previous rejection of claim 56 (cancelled) under 35 USC § 112 (first paragraph) is withdrawn as moot.**

4. **Previous rejections of Claims 58 and 60 under 35 U.S.C. 112, first paragraph, are withdrawn in view of Applicant's persuasive arguments.**

Claim Rejections - 35 USC § 112 (second paragraph)

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 51-55, 57-58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 51:

The claim scope is unclear because the claim mixes statutory classes: -“first affiliate server communicates” “second affiliate server communicates” in a system claim are a method or

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process steps in a system claim. (A single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph. *IPXL Holdings v. Amazon.com, Inc.*, 430 F.2d 1377, 1384, 77 USPQ2d 1140, 1145 (Fed. Cir. 2005); *Ex parte Lyell*, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990) (claim directed to an automatic transmission workstand and the method of using it held ambiguous and properly rejected under 35 U.S.C. 112, second paragraph)).

Appropriate correction is required to the above.

Claims 52-55, 57-58 are rejected as being dependent upon rejected base claim 51.

Claim 52: “is assigned” suggests a step thus rejected as the scope of the claim is unclear.

Appropriate correction is required to the above.

(Note for claim 53: “comprises” after “operable to assign compensation” in claim 51 is considered definitional thus proper. Similarly for claims 57,58).

Note: Previous rejection of claim 56 (cancelled) under 35 USC § 112 (second paragraph) is withdrawn as moot.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 51-56, 57-60, 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouthamel US 7249056 in view of Official Notice (with e.g. Pettersen US 6826594 or Crouthamel US 7249056 as support) and further in view of Landau et al., US 6804660 B2, herein Landau.

Claims 51, 61, and 64:

Crouthamel discloses method and system for exchanging data between affiliated sites via a central hub. Fig 4 shows many affiliates and merchants. Fig 4 shows processing, tracking of referrals via central hub 18 (Herein "CH"). Fig. 6 shows affiliate directing to CH and CH redirecting to merchant.

Each merchant 1 is linked to many partners which all go through the CH. So if Partner 1 refers to merchant M1, it has to go through the CH. So on for merchant 1 (or partner 2) to merchant 2.

Relevant excerpts of Crouthamel :

A system and method is provided for exchanging data between at least one merchant site and at least one partner site across an interconnected computer network. The at least one merchant site enables a user to conduct a transaction on the merchant site, and employs a merchant database format. The at least one partner site has a link to the at least one merchant site and/or a display of transactional information from the at least one merchant site, and employs a partner database format different than the merchant database format. The display of transactional information of the at least one partner site enables a user to conduct a transaction with the at least one merchant site on the at least one partner site. A clearinghouse site is also provided in communication with the at least one merchant site and the at least one partner site. The clearinghouse site has at least one translator to convert data compliant with the merchant database format into data compliant with the partner database format, and is also capable of sending such converted data to the at least one partner site. In addition, the clearinghouse site may have at least one further translator to convert data complaint with the partner database format into data compliant with the merchant database format, and may also be capable of sending such converted data to the at least one merchant site.

Description Paragraph - DETX (80):

When the clearinghouse site 18 receives the sets of transaction data from the partner sites, as shown at 104A and 104B, the clearinghouse site 18

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processes the received sets of transaction data and updates the internal tables on the storage device 22. The internal tables, as previously mentioned, may include product information data, transaction data, referral data and/or tracking data. Using these tables, the clearinghouse site 18 may allocate a credit/commission to each partner site based on the actual amount of transaction.

Brief Summary Text - BSTX (5):

Therefore, it is not surprising that many businesses use the Internet, especially a subset of the Internet known as the World Wide Web (the "Web"), as a significant sales channel and commerce forum. Web servers typically employ the HyperText Transfer Protocol ("HTTP") to enable users to communicate over a number of hyperlinks that interconnect numerous web sites to each other. The web sites are usually created using the HyperText Markup Language ("HTML"), which is a set of "markup" symbols or codes inserted in a file intended for displaying on a web browser. The markup symbols typically direct the Web browser how to display a web page's words and images for the user. For more information on HTTP and HTML, see Internet Engineering Task Force ("IETF") Request For Comments ("RFC") 1945 and RFC 2616, and RFCs 1866 and 2854, respectively, all of which are specifically incorporated in their entirety herein by reference.

Description Paragraph - DETX (12):

*Referring to the drawings, FIG. 1 is a block diagram illustrating a system 10 arranged to employ exemplary embodiments of the present invention. As shown in FIG. 1, the system includes three partner sites 12, 14 and 16 (also referred to as "affiliate sites"), three merchant sites 24, 26 and 28, and a clearinghouse site 18, all of which are interconnected across one or more computer networks 11, such as Wide Area Networks ("WANs"), the World Wide Web ("WWW"), and/or the Internet. However, the computer networks could also take other forms, such as any communication network. **Additionally, for simplicity, only three partner sites, three merchant sites and one clearinghouse site are illustrated in FIG. 1. However, people skilled in the art will appreciate that more or fewer partner sites and merchant sites could also be used, and, further, that more than one clearinghouse site could also be used. Additionally, other arrangements and other elements, whether or not separately known in the prior art, are contemplated and could also be used.***

Description Paragraph - DETX (56):

As the consumer is linked to the clearinghouse site 18, the clearinghouse site 18 appends the consumer's query and possibly inserts a cookie on a consumer's system. The cookie allows the clearinghouse site 18 to track the consumer's actions, such as placing a purchase on a merchant site, and to also

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track the affiliation between each partner site and the merchant site. When the consumer orders data on the merchant sites 22 and/or 24, the order data is sent from the merchant sites 22 and 24 to the clearinghouse site 18, as shown at 64A and 64B in FIG. 4. Then, the clearinghouse site 18 may store the order data on the storage unit 22. The clearinghouse site 18 may also track transactions between the partner sites and the merchant sites, or track how many consumers have clicked-through to the merchant sites from each partner site. Additionally, the clearinghouse site 18 may determine commission payments for each partner site based on the number of click-throughs to affiliated merchant sites and/or the click-throughs that resulted in product purchases on the merchant sites.

Crouthamel does not explicitly disclose successive referrals but it expansively discloses that each merchant has many partners thus it would have been obvious that successive referrals could all be done going through the central hub. Official Notice is taken that it is old and well-known at the time of the invention that central accounting via a central hub is well-known for accounting convenience for the affiliates (see e.g. Pettersen US 6826594 cited in the last Office Action. Also Crouthamel, e.g. col.19 lines 25-30; col. 15 lines 14-22). Thus it would have been obvious to one having ordinary skill in the art at the time of the invention (herein a "PHOSITA") to adopt the referral model via central hub taught by Crouthamel in successive referrals for the above known accounting convenience.

CROUTHAMEL does not specifically disclose "said HTTP commands data including an affiliate field comprising one or more subvariables indicating referral activity".

However, as discussed earlier during prosecution, LANDAU discloses a network of affiliates providing a first link on an affiliate site (e.g. fred.com) to reach a first e-site (CD Merchant.com), then the first e-site providing a second link to reach a second e-site (e.g. MusicMemorabilia.com) (see at least Fig. 7 and associated text ; col. 15 lines 66 to col. 20 line 2: for example, referring to the discussion in cols. 17-18).

Landau discloses "HTTP commands data including an affiliate field comprising one or more subvariables indicating referral activity" (e.g. LANDAU discloses embedding primary (fred) and secondary source identifiers (CD Merchant) associated with any primary and secondary referral links used by the user to reach a first e-site in a navigational link used to reach the 2nd e-site , col. 18 lines 9-10; also see col. 17 lines 20 , 30).

Thus it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add the Http commands including an affiliate field comprising one or more subvariables indicating referral activity, as taught by Landau to CROUTHAMEL modified as above discussed, to allow tracking of successive referrals. In the referral model of CROUTHAMEL via central hub, the central hub identifier would have been used as intermediate destination or source of the successive referrals as appropriate. In view of the level of skill evidenced in Landau, the needed modifications would have been obvious to and feasible by a

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PHOSITA. Thus e.g. a referral link from an affiliate site to a merchant via the central hub would read on “a first affiliate server communicates a HTTP command to said clearinghouse server including an affiliate field indicating a user’s use of said primary referral link” as claimed in claim 51.

Claims 57-60 : Crouthamel in view of Official Notice and Landau teach claim 51 but do not specifically teach all the claimed details limitations. However as discussed above both Crouthamel and Landau disclose method for generating website links using http commands (see at least citations above).

Landau teaches an Url contains the source and destination identifiers (e.g.col. 10 lines 33-33; col.17 line 30). Landau further teaches 2 successive referrals can use a link showing both referrers. See e.g. URL link at (col.18 lines 9-10):

<http://memorabilia.essociate.com/partners/cdmerch/1001/>

(e.g. “cdmerch/1001/” reads on a first sublink;
“memorabilia.essociate.com/partners/cdmerch” reads on a second sublink in the successive referral link)

Thus, when Fred.com refers the consumer to CDMerchant.com and thence on to MusicMemorabilia.com, the link shows the identifiers of both Fred.com (“1001”) and CDMerchant.com (“/cdmerchant”).

Thus in view of the level of skill shown in Landau, it would have been obvious to a PHOSITA to modify the links and sublinks and http commands teachings of Landau, as needed, with the appropriate source and destination identifiers, as needed, to effect the referral via central hub for successive referrals, involving the proper and number of parties as desired, in the system of Crouthamel in view of Official Notice and Landau, and to obtain, as claimed:

primary referral link comprising a first sub-link from said first affiliate server to said clearinghouse server and a second sub-link from said clearinghouse server to said second affiliate server wherein said HTTP command to said clearinghouse server corresponding to said user’s use of said primary referral link is embedded in said first sub-link;

wherein said secondary referral link comprises a third sub-link from said second affiliate server to said clearinghouse server and a fourth sub-link from said clearinghouse server to said merchant server.

wherein said HTTP command to said clearinghouse server corresponding to said user’s use of said secondary referral link is embedded in said third sub-link.

Claims 52-53, 62-63, 65-66:

CROUTHAMEL and Landau disclose a system as in claims 51, 61 and 64 above, and compensation of affiliates but does not disclose wherein compensation is assigned to the first affiliate website and the second affiliate website in equal shares.

or

wherein compensation assigned to the first affiliate website comprises a majority portion of a commission associated with said user's completion of the electronic transaction, and compensation assigned to the second affiliate website comprises a minority portion of a commission associated with said user's completion of the electronic transaction.

Official Notice is taken that it is well-known before invention time that compensation schemes are to be agreed between the parties as desired. They may be dictated by market forces. They may be dictated by pure greed, self-dealing and can be completely arbitrary and capricious, without (at least apparent) basis on performance. See e.g. "Fixing Executive Compensation Excesses: The board members who decide a CEO's pay have a fundamental conflict of interest, and shareholders need to have more of a say", by Edward E. Lawler III, BusinessWeek, Viewpoint February 5, 2009, http://www.businessweek.com/print/managing/content/feb2009/ca2009025_072667.htm, downloaded 02/16/2009.

***Note:** "For the last 10 years more than 25% of board members have said it is generally too high, and 50% agree that it is too rich in some high-profile cases."*

Thus the practice predates the instant invention. On the other hand, they may be based on altruistic motives. See e.g. **Excerpt of Hoyt**, U.S. Provisional Application No. 60/178,260, filed January 25, 2000, on Public Pair (6 pages attached), page 1 of 6, 2nd to last para., disclosing referrals without commissions.

Because it is obvious to follow customary practices, thus in the system of CROUTHAMEL and Landau, setting compensation of the parties, as desired and agreed by the parties, with or without basis in performance or reason, (as shown in e.g. Lawler III and Hoyt), in any proportions, including in the proportions as claimed, would have been obvious to a PHOSITA. (It is noted the instant specification does not give any reason for the particular compensation split, see e.g. [0013] of the PgPub version, thus the particular compensation split could just have been arbitrary and is not critical to the invention).

Claims 54-55:

CROUTHAMEL and Landau disclose a system as in claim 51 above and CROUTHAMEL further discloses a database communicatively coupled to the clearinghouse server, the database operable to store data (see discussion of claim 51 above) .

The “data associated with the first affiliate website and the second affiliate website” and “data associated with compensation assigned to the first affiliate website and the second affiliate website” are non-functional descriptive material to which no patentable weight is given because the type of data does not impact the structure of the clearinghouse server. See MPEP 2106.

Since a database can store any type of data, it would have been obvious “data associated with the first affiliate website and the second affiliate website” and “data associated with compensation assigned to the first affiliate website and the second affiliate website” could be stored if desired. Further CROUTHAMEL at least implicitly discloses the above data.

Response to Arguments

9. Applicant's arguments have been fully considered but they are not persuasive. The following is an integral part of the rejection above.

Applicant argues no HTTP tracking is needed in Crouthamel (citing col. 15 lines 4-13) since each referral link moves through the central hub therefore there is no reason for the combination with the HTTP tracking in Landau. Response at 10.

The Examiner notes Crouthamel teaches user redirection to Merchant site via the central hub (Figure 6, steps 86, 88,98 and associated text) and further teaches tracking of consumer actions, tracking of affiliations between affiliates and merchants sites, commission payments to the referrers upon transactions at the merchants, and merchants sending back purchase data to the central hub (col. 15 lines 14-22; Figure 4 and associated text). Crouthamel teaches, for compensation, identifying the referrals resulting in purchases by cookies or by other identifiers (col.19 lines 25-30).

Landau teaches an Url contains the source and destination ID (e.g. col. 10 lines 33-33; (col. 17 lines 26-33). Landau further teaches 2 successive referrals can use a link showing both referrers. See e.g. URL link at (col.18 lines 9-10):

<http://memorabilia.essociate.com/partners/cdmerch/1001/>

Thus, when Fred.com refers the consumer to CDMerchant.com and thence on to MusicMemorabilia.com, the link shows the identifiers of both Fred.com (“1001”) and

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CDMerchant.com (“/cdmerchant/”). Note that contrary to argument at Response p. 12, Landau indeed teaches successive referrals.

Applicant also argues Landau does not teach an HTTP command to a clearinghouse server, nor the 1st and 2nd affiliate servers, the clearinghouse server, and the merchant server as in claim 51. Response p. 9. However Crouthamel already teaches first affiliate server (e.g. Fig 4 item 12), 2nd affiliate servers (Fig 4, any of the affiliate 12 or 14 or the merchant sites 22, 24 can be considered an affiliate server), the clearinghouse server 18, and the merchant server (e.g. Fig 4, merchant sites 22, 24). And Crouthamel clearly teaches use of HTTP protocol (see excerpts). That is, the relevant teaching of Landau is that successive transactions can be shown with partial links in a combined HTTP link.

Since Crouthamel teaches all transactions go through the central hub, thus it would have been obvious to a PHOSITA to have the successive transactions go through the central hub for central tracking and accounting convenience for the affiliates as taught in the Official Notice. Since the Crouthamel system supports HTTP protocol (for use with web servers, see e.g. Figure 1 and associated text), thus it would have been obvious to a PHOSITA to use the combined HTTP commands as taught by Landau in the system of Crouthamel in view of the Official Notice to allow tracking successive referrals for commissions accounting. In view of the level of skill evidenced in Landau, it would have been obvious to a PHOSITA the central hub identifier would have been used as intermediate destination or source, as needed, in successive referrals via the central hub. Contrary to argument, the fact that Crouthamel also teaches database formats translation does not detract from its teachings of tracking referrals via a central hub and compensation therefor.

Finally Applicant argues no teaching, suggestion or motivation in the references cited. Response at 12. The Examiner notes KSR provided that the teaching, suggestion or motivation is not the only test. A logical line of reasoning was presented above, properly showing obviousness of the claimed invention.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kirsch US 5963915 A discloses Secure, convenient and efficient system and method of performing trans-internet purchase transactions, central clearinghouse, URL redirection and cookie technologies.

Ross US 6629135 discloses Affiliate commerce system and method.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The Examiner works a part-time schedule and can normally be reached on Monday-Wednesday 9:00-6:00. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, LYNDIA JASMIN can be reached on (571)272-6782. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314). Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Khanh H. Le/
Primary Examiner, Art Unit 3688
February 16, 2010